No. 80-929

IN THE

Supreme Court of the United States

October Term, 1980

SOL NEIL CORBIN, as Trustee in Bankruptcy of Franklin New York Corporation,

Petitioner,

and

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, et al.,

Respondents,

—against—

FEDERAL RESERVE BANK OF NEW YORK, FEDERAL DEPOSIT INSURANCE CORPORATION, in its Corporate Capacity and as Receiver of FRANKLIN NATIONAL BANK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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Argument

This reply is addressed to new matter, namely, the contention by Respondent Federal Reserve Bank of New York that the post-insolvency interest rates imposed by the Federal banking authorities upon the estate of an insolvent national bank "are not subject to judicial review" (Reserve Bank Brief at p. 22). As authority for this propo-

sition Reserve Bank relies on *Marbury* v. *Madison,* citing a dictum regarding Presidential discretion, 5 U.S. (1 Cranch) 137, 170 (1803). Respondent's theory is that in the absence of a specific statute adopting the judicially-created tests of *Vanston/Fleming,* the banking authorities are free to disregard those equitable balancing tests because there is "no law to apply" (Reserve Bank Brief at p. 22).

Nothing in *Marbury* v. *Madison* supports the contention that there is no rule of law applicable to a loan made by the Federal Government in pursuit of its national purposes. Indeed, the contention is contrary to well-settled principles long established, and recently affirmed, by this Court. *Clearfield Trust Co.* v. *United States,* 318 U.S. 363, 366-67 (1943) (where United States disburses funds for national purposes, it is "exercising a constitutional function or power", and in "absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards"); *see also United States* v. *Kimbell Foods, Inc.,* 440 U.S. 715, 726 (1979).

Evidently recognizing the force of this authority, the Solicitor General does not join in the contention that there is "no law to apply". He urges, however, that a new principle of law should be established for the Federal banking authorities, carving them out from the long-established Federal law declared by this Court in *Vanston* and *Fleming* (FDIC Brief at pp. 6-10). Under that new principle, any equitable review of the Government's post-insolvency interest claims would be barred as jeopardizing the functions performed by the Government's banking authorities (*id.*). The prime concern of those authorities, however, is the health of the nation's banking system. Deriving a windfall profit from post-insolvency interest, at the ex-

pense of other creditors of the insolvent estate, forms no part of that salutary concern.* Imposition of *Vanston/Fleming* so as to bar such a profit would assist, rather than impede, the proper administration of the banking laws, by confirming the applicability of a sensible, settled rule of law by way of guidance for the banking authorities.

In short, Respondents' briefs highlight the importance of the issue. The applicability of *Vanston/Fleming* to a national bank liquidation has never been passed on before (*see* FDIC Brief, p. 6 n.7). The petition should be granted to resolve that issue and confirm the rule of law that applies.

February 18, 1981

Respectfully submitted,

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* Respondents' briefs do not deny that an interest profit was derived by Federal Reserve from the insolvent estate. While that profit is not alluded to in any of the findings of fact below (none of which are contested), the record is quite clear that such a profit was in fact reaped (*see* the Joint Appendix below at 345 (Uncontested Proposed Finding of Fact 67, Item 8), Col. III), 1343-44).